Entergy Gulf States, Inc. *and* International Brotherhood of Electrical Workers, Local Union No. 2286, AFL–CIO, CLC. Case 16–CA–20150

April 28, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on November 1, 1999, the General Counsel of the National Labor Relations Board issued a complaint on December 22, 1999, and an amended complaint on February 15, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the clarification of the bargaining unit in Case 16–UC–170. (Official notice is taken of the "record"in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 16, 2000, the General Counsel filed a Motion for Summary Judgment. On March 17, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the inclusion of the disputed classifications in the bargaining unit, asserting that the Board's decision in *Mississippi Power & Light Co.*, 328 NLRB No. 146 (1999), overruling *Big Rivers Electrical Corp.*, 266 NLRB 380 (1983), is contrary to Board policy and law. In addition, the Respondent contends that the facts here are distinguishable from the facts in *Mississippi Power & Light*, and that the operations coordinators (OCs) and the lead operations coordinators (LOCs) are supervisors within the meaning of Section 2(11) of the Act.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Entergy Gulf States Inc., a Texas corporation, has been engaged in the business of providing electrical power throughout its various facilities located in Louisiana and Texas. During the 12 months preceding the issuance of the amended complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $100,000, and purchased and received for use at its Texas facilities goods and materials valued in excess of $5000 directly from suppliers located outside the State of Texas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Unit Clarification Proceeding

The employees of the Respondent whose classifications are set forth in the wage schedules in the current collective-bargaining agreement entered into on August 15, 1999 (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

On June 6, 1969, the Union was certified as the exclusive collective-bargaining representative of the unit employed by Gulf States Utilities. About January 1, 1994, Gulf States Utilities merged with the Respondent, after having been purchased by the Respondent. From about June 6, 1969, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employed by Gulf States Utilities, and at all times since about January 1, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Respondent's employees in the unit.

This recognition has been embodied in successive collective-bargaining agreements between 1972 and 1992, 1995, 1997, and 1999. The current agreement was effective on August 15, 1999, and expires on August 18, 2001.

Around 1970, the first collective-bargaining agreement was negotiated between the parties, which agreement included the classification of division substation opera-

[1] Member Hurtgen dissented from the granting of the Union's request for review on July 26, 1999, and from the denial of the Employer's request for review on November 3, 1999, based on his dissenting opinion in *Mississippi Power & Light*, supra. While he continues to be of the view that these positions were correct, he agrees that the Respondent has not presented any matters which would warrant denial of the Motion for Summary Judgment.

tors (DSOs). Around spring 1995, the Respondent and the Union negotiated toward a successor agreement that sought to include the DSO classification.

About June 22, 1995, the Respondent filed a petition in Case 16–UC–170, seeking to exclude the DSO classification from the bargaining unit pursuant to its position that these employees were supervisors within the meaning of Section 2(11) of the Act. A hearing was held in this matter on July 11, 1995.

About September 1, 1995, the Regional Director issued a Decision and Order that clarified the bargaining unit to exclude the DSO classification because these employees were determined to be supervisors within the meaning of Section 2(11) of the Act. The Respondent immediately removed the DSOs from the bargaining unit. About September 21, 1995, the Union filed a request for review of the Regional Director's decision.

About early 1999, the Respondent, due to a reorganization, reclassified the DSOs to operations coordinators (OCs) and lead operations coordinators (LOCs). About July 26, 1999, the Board granted the Union's request for review and remanded the proceeding to the Regional Director for further consideration consistent with extant law. About August 23, 1999, the hearing was reopened by the Region and additional evidence was received. About September 29, 1999, the Acting Regional Director issued a Supplemental Decision and Order, including the OCs and the LOCs in the bargaining unit.

About October 19, 1999, the Respondent filed a request for review and stay of the Acting Regional Director's Supplemental Decision and Order. About November 3, 1999, the Board denied the Respondent's request for review and stay of the Acting Regional Director's Supplemental Decision and Order.

The Union continues to be the exclusive representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

Since October 4, 1999, the Union has requested the Respondent to bargain over the inclusion of the OC and LOC classifications in the bargaining unit and, since October 5, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after October 5, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the operations coordinator and the lead operations coordinator classifications in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Entergy Gulf States, Inc., Beaumont, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers, Local Union No. 2286, AFL–CIO, CLC, as the exclusive bargaining representative of its employees in the operations coordinator and lead operations coordinator classifications in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union and put in writing and sign any agreement reached on the terms and conditions of employment for its employees in the operations coordinator and lead operations coordinator classifications.

(b) Within 14 days after service by the Region, post at its facilities throughout Texas and Louisiana, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 16 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 5, 1999.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 28, 2000

Sarah M. Fox, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, Local Union No. 2286, AFL–CIO, CLC, as the exclusive representative of our employees in the operations coordinator and lead operations coordinator classifications in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our unit employees in the operations coordinator and lead operations coordinator classifications.

ENTERGY GULF STATES, INC.